

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

MT. CARMEL PUBLIC UTILITY CO.	)	
	)	
Petition for an Order of the	)	Docket No. 07-0225
Commission authorizing issuance	)	
of a Consolidated Note under 220	)	
ILCS 5/6-102.	)	

**DRAFT ORDER**

By the Commission:

On March 27, 2007, Mt. Carmel Public Utility Co. ("Mt. Carmel" or "~~Petitioner~~") filed with the Illinois Commerce Commission ("Commission") a verified Petition pursuant to Section 6-102(b) and 7-101 of the Public Utilities Act (~~%Act~~), 220 ILCS 51-101 et seq. The Petition seeks all necessary authorizations for Mt. Carmel to issue a note in a principal amount not to exceed \$8,000,000.00 to Old National Bank of Mt. Carmel, Illinois and the execution of documents securing property in connection therewith. The filing has been amended.

Pursuant to proper legal notice, a status hearing was held in this matter before a duly authorized Administrative Law Judge of the Commission at its offices in Chicago, Illinois, on May 17, 2007. Appearances were entered by counsel on behalf of Petitioner, and by Sheena Kight-Garlich, a Commission Staff member with the Finance Department of the Commission's Financial Analysis Division. Dan E. Long, a consultant for Mt. Carmel, presented testimony and exhibits in support of the Petition. Sheena Kight-Garlich presented Testimony on behalf of Staff, indicating one discrepancy between the Amended Petition filed by Mt. Carmel and Staff's position. Mt. Carmel elected not to file rebuttal testimony, but will comply with Staff's recommendation and the Order of this court.

On May 22, 2007, Staff submitted an Answer to Mt. Carmel's Amended Petition. In the Answer, Staff recommends that the Commission enter an order authorizing the transactions described in the Amended Petition and identifying the applicable provisions of the Act and Illinois Administrative Code. Staff recommended the Commission require Mt. Carmel to pay a fee under 220 ILCS 5/6-108 in the amount of \$19,200.

On May 29, 2007, a Joint Stipulation was entered into by the parties to admit into evidence MCPU Exhibit 1.0 and MCPU Exhibit 1.1, being the Direct Testimony of Dan E. Long and a draft of the proposed promissory note to be authorized and executed, and ICC Staff Exhibit 1.00, being the Direct Testimony of Sheena Kight-Garlich,

without further evidentiary hearings and to proceed to entry of an order on a paper record.

#### **MT. CARMEL'S POSITION:**

Petitioner is an Illinois corporation that provides electric and natural gas service to the public in Mt. Carmel, Illinois and portions of the surrounding area in Wabash County and Lawrence County, Illinois.

In Commission Docket No. 96-0366, Petitioner obtained authorization from the Commission to consolidate debt and issue a note up to \$4,500,000 to Security Bank and Trust Co., now Old National Bank of Evansville, Indiana (hereinafter "Old National Bank"). Said note was to bear ICC Identification No. 5993. This note has subsequently been modified to lower the interest rate and extend the maturity. The balance as of March 1, 2007 was \$1,781,090.00

Mt. Carmel had reasonable capital expenditures for construction of a new electric substation and transmission lines to enhance reliability and to allow for future growth within its system. Mt. Carmel borrowed \$1,300,000 on a short-term note from Old National Bank to fund these projects. Other ongoing capital expenditures and operational costs coupled with no rate relief request since 1997 necessitated the establishment of a \$1,000,000 line of credit borrowed at Old National Bank.

Mt. Carmel entered into negotiations with Old National Bank for debt restructuring of current debt and for borrowing of additional funds for enhanced future operational performance. The terms of the negotiated loan are for \$8,000,000 with an interest rate of 1.5% over the London Interbank Overnight Rate (LIBOR) as reported in the Wall Street Journal. The consolidated note will be for a primary term of five (5) years and allow for interest payments only. The indebtedness would also allow Mt. Carmel to utilize various options such as zero sum interest cap and interest swap. (Mt. Carmel stated that it would not utilize these options without seeking further approval from the Commission.) A Financing Statement and Security Agreement with mortgage of property will also be required. There is no affiliated interest between Mt. Carmel and Old National Bank.

Mt. Carmel witness Dan E. Long stated in his direct testimony (MCPU Exhibit 1.0) that this form of financing is most efficient and practical for Mt. Carmel as Mt. Carmel is not large enough to use more common utility financing such as bond issuances or additional stock issuances. Further, the ability to pay interest only on the note will allow Mt. Carmel to utilize the additional funds borrowed as a reasonable addition to its capital structure for future operations and future capital projects thereby allowing it to maintain more consistent cash flows. Witness Long also stated that the loan will result in a more traditional mix of long-term debt and equity, i.e. a more typical capital structure with ratios of long term debt at 52.04% to common equity at 47.96%.

This structure allows a more balanced level of debt and equity and reduces Mt. Carmel's overall cost of capital.

Mt. Carmel stated that it feels the proposed note is reasonable for restructuring cash flows and that the proceeds from the existing debt have been prudent and reasonably incurred and expended.

Mt. Carmel in its Amended Petition stated that the Section 5/6-108 fee should not be based on the portions of the current debt, but should apply only to the new and additional funds being borrowed. However, Mt. Carmel did not object to Staff's position that the fee should apply to the full \$8,000,000 and has stated that it will follow Staff's recommendation for payment of the fee in the amount of \$19,200, which was calculated on the full \$8,000,000.

### **STAFF'S POSITION:**

Staff reviewed the Amended Petition, MCPU Exhibit 1.0 and 1.1, and Article VI of the Act. Staff asserts that Mt. Carmel's proposal is subject to Section 6-101 of the Act, which requires the Commission to provide proper identification numbers on the proposed 2007 indebtedness when issued. Subsection (a) of Section 6-102 of the Act, Staff continues, provides that prior to the issuance of stocks, notes, and other evidences of indebtedness payable at periods of more than 12 months the public utility shall first receive a Commission order authorizing the issue stating the amount and the purpose for the financing and that in the opinion of the Commission the money, property, or labor to be procured or paid for by such issue is reasonably required for the purpose or purposes specified in the order. In Staff's opinion, the proceeds of the borrowing are reasonably required to finance utility assets and to refinance existing indebtedness. Staff also asserts that the Company's proposal is subject to Section 6-102(b), which grants the Commission the power to refuse its approval of applications to issue securities, in whole or in part, upon a finding that the issue of such securities would be contrary to the public interest. Staff states further that the issuance is not contrary to the public interest. With regard to Section 6-108, Staff states the Company's proposal is subject to Section 6-108, including the proceeds Mt. Carmel contemplates using for the purposes of retiring existing indebtedness since that indebtedness remains outstanding without the Commission's consent. The Company shall be required to pay an amount equal to 24 cents for every \$100 of the \$8,000,000 principal amount of indebtedness authorized by the Commission for which no fee has been previously paid. Staff calculates that the 6-108 fees on the \$8,000,000 are \$19,200.

Staff also notes that the proposal is subject to 83 Illinois Administrative Code 240, ~~Reports of Issuance and Sale or Disposal of Securities and the Application of Proceeds (General Order 129)~~ ~~Part 240~~. Part 240 requires petitioner to file reports relative to the issuance and sale of the mortgage Bonds and application of the proceeds, unless the commission order provides otherwise.

## **COMMISSION CONCLUSIONS:**

The Commission has jurisdiction over Mt. Carmel and the matters requested in its Amended Petition. The Commission concludes that the proposed debt restructuring and additional capital funds to be borrowed from Old National Bank are reasonable and prudent and should be used to retire existing short term and long term debt, and the excess capital funds should be used financing utility assets. The new indebtedness is not against the public interest and will not adversely affect the financial condition of Mt. Carmel. The terms of the loan are reasonable and should be approved. Mt. Carmel does not have an affiliated interest with Old National Bank.

Upon execution of the promissory note, the note shall contain on its face the Commission Identification Number \_\_\_\_\_. Staff calculated the fee pursuant to 220 ILCS 5/6-108 in the amount of \$19,200 should be paid to the Commission. Mt. Carmel did not contest this recommendation of Staff and stated it would accept Staff's recommendation. Within 30 days after service of this Order, Mt. Carmel shall pay to the Commission said fee.

After execution of the promissory note by Mt. Carmel and upon the entire funds borrowed being transferred to Mt. Carmel, Mt. Carmel shall file a first and final report with the Commission, pursuant to 83 Ill. Adm. Code Part 240. The report shall state that the funds have been received, that the current indebtedness has been paid and that the remaining balance of the capital funds have been put into the corporate capital structure for financing utility assets.

## **FINDINGS AND ORDERING PARAGRAPHS:**

Having considered the entire record and being fully advised in the premises, the Commission, is of the opinion and finds that:

- (1) Mt. Carmel Public Utility Company is an Illinois corporation engaged in the transmission and distribution of electricity and in the distribution of natural gas to the public in Illinois and is a Public Utility as defined in the Public Utilities Act;
- (2) the Commission has jurisdiction over the Company and of the subject matter of this proceeding;
- (3) the recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (4) in view of the Commission's policy and practice of maintaining continuing surveillance of the books and records of Petitioner, it is not deemed necessary for purposes of this proceeding to make a physical evaluation of Petitioner's property;

- (5) approval should be granted to Petitioner for the issuance of a note to Old National Bank, in a principal amount not to exceed \$8,000,000, in the form of MCPU Exhibit 1.1, and for the execution of documents necessary therewith for Old National Bank to perfect and secure its loan;
- (6) the transaction involving the loan with Old National Bank is not with an affiliated interest;
- (7) the proceeds from the issuance of the note are reasonably required for the lawful purpose of retiring short-term and long-term debt and financing utility assets;
- (8) subject to the terms and conditions of this Order, the prayer of the Amended Petition may reasonably be granted and the public will be inconvenienced thereby.

IT IS THEREFORE ORDERED that approval is granted to Mt. Carmel to issue its note in a principal amount not to exceed \$8,000,000 to Old National Bank, in the form of MCPU Exhibit 1.1 and to execute other necessary documents in connection therewith for Old National Bank to perfect and secure its loan.

IT IS FURTHER ORDERED that the approval granted hereinabove is granted on the following conditions:

- (1) proceeds realized from the issuance of the note herein authorized shall be used only for the purposes stated in Finding (7) herein.
- (2) Petitioner shall, before the issuance and delivery of the note herein authorized, cause the following to be placed on the face thereof:

ILLINOIS COMMERCE COMMISSION  
Identification No. \_\_\_\_\_

IT IS FURTHER ORDERED that Mt. Carmel shall file a report as required by 83 Ill. Adm. Code 240 relative to the issuance and disposition of the note and the application of the proceeds thereof as outlined above.

IT IS FURTHER ORDERED that Mt. Carmel is charged Twenty-Four Cents for each \$100 of the principal amount of the note (\$8,000,000); such charge amounts to \$19, 200; such sum shall be paid to the Illinois Commerce Commission, Public Utility Fund, for deposit in the State Treasury no later than 30 days after service of this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this \_\_\_\_ day of June, 2007.

(SIGNED) CHARLES E. BOX

Chairman

(S E A L)